IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5935 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAHIRABBAS PRIMOHAMMAD SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SAMIR DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. The order of detention dated 22/5/2000 passed by the Commissioner of Police, Ahmedabad City in exercise of powers conferred on him by sub-section (2) of section 3 of the Gujarat Prevention of Anti-Social Activities, Act,

1985 ('the Act' for short) against the detenu is subject matter of challenge in the present petition which is filed under Article 226 of the Constitution of India.

2. The order of detention was executed on May 22, 2000. The grounds of detention were communicated to the detenu immediately as required by section 9 of the Act. The detaining authority had thereafter submitted his report to the State Government as contemplated by section 3 (3) of the Act. On receipt of the report from the detaining authority, the State Government had approved the order of detention within 12 days from the date of making of it. The State Government had thereafter referred the case of the detenu to the Advisory Board together with grounds of detention and other relevant materials. The Advisory Board has considered the materials placed before it and reported in its opinion that there was sufficient cause for detention of the detenu. On receipt of the report from the Advisory Board, order of detention was confirmed by the State Government and the State Government has continued the detention of the detenu.

3. From the grounds of detention it is apparent that the detaining authority has taken into consideration cases registered against the detenu under Chapters XVI and XVII of the Indian Penal Code with Shaher Kotda Police Station, Ahmedabad in order to form subjective satisfaction that the petitioner is a dangerous person within the meaning of section 2 (c) of the Act. The grounds of detention further indicate that the detaining authority has taken into consideration statements of two witnesses in order to reach the subjective satisfaction that the activities of the detenu as a dangerous person disturbed maintenance of public order and, therefore, it was necessary to detain him with a view to preventing him from acting in any manner prejudicial to maintenance of public order.

4. Though several grounds have been urged by the learned counsel for the petitioner for challenging the detention order, it is not necessary to refer to all of them, except one which in my opinion merits acceptance.

5. The learned counsel for the petitioner submitted that the detaining authority has wrongly exercised the power u/S. 9(2) of the Act and as such wrong exercise of power has resulted into infringement of the right of the detenu to make effective representation guaranteed under Article 22 (5) of the Constitution of India, the order of detention should be set aside. It was pointed out that

the statements of two witnesses were recorded by Police Inspector, PCB, Ahmedabad on May 20, 2000, after which proposal to detain the detenu was made to the detaining authority and detaining authority had mechanically verified those statements on May 21, 2000, and passed the order of detention on May 22, 2000 and as the power u/S. 9(2) of the Act is exercised mechanically, the petition should be accepted. In support of this submission the learned counsel has placed reliance on the decision of Division Bench of this Court rendered in Kalidas C. Kahar v/s. State of Gujarat reported in 1993 (2) G.L.R. 1659.

6. It may be stated that the detaining authority has not filed any reply controverting the averments made in the petition. The record of the case indicates that Police Inspector, PCB, Ahmedabad had recorded statements of two witnesses on May 20, 2000 and after which the proposal was made to the detaining authority to detain the detenu. The record further shows that these two statements were verified by the detaining authority on May 21, 2000 and thereafter the impugned order of detention was made on May 22, 2000. It is rather curious that the entire bunch of materials was supplied by the sponsoring authority at the time of making the proposal to detain the detenu and that has been promptly accepted by the detaining authority. As observed earlier, on the next day of so called verification of the statements, the order of detention was passed against the detenu. Section 9(2) of the Act empowers the detaining authority to withhold disclosure of those facts which it considers to be in the public interest. At the time of exercising the privilege u/S. 9(2) of the Act a balance is required to be struck between the public interest on one hand and the right of the detenu to make a representation under Article 22 (5) of the Constitution on the other. When the statements of witnesses are sought to be relied upon for the purpose of passing detention order, the right of the detenu to point out that persons whose statements are recorded are fictitious persons and/or that their statements are bogus statements should not be ignored. The record of the case does not indicate that before exercising power u/S. 9(2) of the Act the detaining authority had kept in mind the conflicting interests. It is the duty of the detaining authority to strike a balance as mentioned above because exercise of such powers also affect the right of the detenu to make representation to the competent authority. The record of the case does not indicate that there was sufficient time for the detaining authority to examine the possibility of exercising the power u/S. 9(2) of the Act as the

proposal to detain the detenu was made on May 20, 2000 and after so called verification of those statements on May 21, 2000, the order of detention was passed against the detenu on May 22, 2000. The material on record does not show as to how the detaining authority examined the necessity of exercising the power u/S. 9(2) of the Act. Taking similar view, the Division Bench in Kalidas C. Kahar's case (supra) had quashed the detention order. Under the circumstances, I am of the view that the detaining authority has wrongly exercised power u/S. 9(2) of the Act which has affected the detenu's right of making an effective representation under Article 22 (5) of the Constitution of India vitiating the continued detention of the detenu.

6. For the foregoing reasons, the petition succeeds. The order of detention dated May 22, 2000 passed by the Commissioner of Police, Ahmedabad city, which is produced at Annexure-A to the petition is quashed and set aside. The respondents are directed to release the detenu immediately unless his presence is needed with reference to any other case. Rule is made absolute accordingly with no order as to costs. DS Permitted.

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PVR.